

PATENT COOPERATION TREATY

From the:
INTERNATIONAL SEARCHING AUTHORITY

To:

Baldwins
PO Box 852
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NEW ZEALAND

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing
(day/month/year) 14 APR 2005

Applicant's or agent's file reference
220943-142

FOR FURTHER ACTION
See paragraph 2 below

International application No.

PCT/NZ2004/000316

International filing date (day/month/year)

6 December 2004

Priority date (day/month/year)

4 December 2003

International Patent Classification (IPC) or both national classification and IPC

Int. Cl. ⁷ A01M 23/00

Applicant

MCCORMICK, David James Calder et al

1. This opinion contains indications relating to the following items:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Box No. I | Basis of the opinion |
| <input type="checkbox"/> Box No. II | Priority |
| <input checked="" type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input checked="" type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement. |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> Box No. VIII | Certain observations on the international application |

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the IPEA/AU

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Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
- a. type of material
- ☐ a sequence listing
- ☐ table(s) related to the sequence listing
- b. format of material
- ☐ in written format
- ☐ in computer readable form
- c. time of filing/furnishing
- ☐ contained in the international application as filed.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application☒ claims Nos: 28-30

because:

☐ the said international application, or the said claim Nos.relate to the following subject matter which does not require an international preliminary examination (*specify*):☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos.
are so unclear that no meaningful opinion could be formed (*specify*):☐ the claims, or said claims Nos.
are so inadequately supported by the description that no meaningful opinion could be formed.☒ no international search report has been established for said claims Nos. 28-30☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished☐ does not comply with the standard

the computer readable form

☐ has not been furnished☐ does not comply with the standard☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.☐ See Supplemental Box for further details.

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees the applicant has:
- ☐ paid additional fees
- ☐ paid additional fees under protest
- ☒ not paid additional fees
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- ☐ complied with
- ☒ not complied with for the following reasons:

The international application does not comply with the requirements of unity of invention because it does not relate to one invention or to a group of inventions so linked as to form a single general inventive concept. In coming to this conclusion the International Searching Authority has found that there are different inventions as follows:

1. Claims 1-27 are directed to an extermination device and a method of using the device, wherein the device comprises of a holder and trigger mechanism, the holder being configured to hold an expanded resilient ring.
2. Claims 28-30 are directed to a loading device and a method of using the device, wherein the device has a tapering body and a formation at the wide end adapted to engage with the holder of an extermination device.

Since the abovementioned groups of claims do not share any of the technical features identified, a 'technical relationship' between the inventions, as defined in PCT rule 13.2 does not exist. Accordingly the international application does not relate to one invention or to a single inventive concept, a priori.

4. Consequently, this opinion has been established in respect of the following parts of the international application:
- ☐ all parts
- ☒ the parts relating to claims Nos. 1-27

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|--------------------------------|-----|
| Novelty (N) | Claims 4, 5, 10, 12-17, 25, 26 | YES |
| | Claims 1-3, 6-9, 11, 18-24, 27 | NO |
| Inventive step (IS) | Claims | YES |
| | Claims 1-27 | NO |
| Industrial applicability (IA) | Claims 1-27 | YES |
| | Claims | NO |

2. Citations and explanations:

NOVELTY (N): Claims 1-3, 6-9, 11, 18-24, 27

(a) JP 2001-333683: Claims 1-3, 6, 7, 9, 18-24, 27

From description and drawings of the citation, holder is 1; trigger mechanism 2; resilient ring 4; firing member 3.

(b) US 5177896: Claims 1-3, 6-9, 18-24, 27

Holder is 4; trigger mechanism 18; resilient ring 40; firing member 24/28/30

(c) US 2247066: Claims 1-3, 6, 7, 9, 11, 18-24, 27

Holder is 10; trigger mechanism 19, 24; resilient ring 12; firing member 17

(d) JP 2003-070408: Claims 1-3, 6, 7, 9, 18-24, 27

Holder is 1; trigger mechanism 3; resilient ring 7; firing member 4, 5

Hence each citation discloses all the features of each claim listed alongside.

INVENTIVE STEP (IS): Claims 1-27

Claims 4, 5, 10, 12-17, 25, 26, each lack an inventive step with respect to each of the citations (a)-(d); Claim 8 lacks an inventive step with respect to each of the citations (a), (c) and (d); Claim 11 lacks an inventive step with respect to each of the citations (a), (b) and (d). The invention claimed in each claim is merely a variation of the invention disclosed in each citation and the person skilled in the art (PSA) would arrive at the claimed invention by general experimentation only involving no ingenuity.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. Claims 1-18 do not define the invention described because they omit the following feature which, from reading the specification as a whole, appears to be essential to the invention:

(a) the extermination device includes a resilient ring

It is quite clear from your description that the ring is part of the device and, indeed, is the crucial part of your invention. In fact your invention would fail to work if the ring is not part of the device. As the claims now stand they define only that the device comprises a holder and trigger mechanism and nothing else. In particular Claim 1 merely states that the holder is 'configured' to hold the ring, ie the holder is suitably shaped etc so that it can hold a ring. Nowhere in Claim 1 is it defined that a ring is actually held by the holder or that the device comprises a ring as well. Therefore feature (a) must be defined in Claim 1.